

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 20000
[REDACTED]	)	
	)	DECISION
Taxpayer.	)	
	)	
	)	
	)	

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On December 8, 2006, the staff of the Sales, Use and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (Taxpayer), proposing sales and use tax and interest for the period January 1, 2003, through December 31, 2005, in the total amount of \$12,544.

In a letter dated February 7, 2007, the Taxpayer filed a timely appeal and petition for redetermination. In the petition the Taxpayer argued that the legislative statutes and administrative rules were difficult for it to comprehend with respect to its “unique type of business,” and that the printed information provided by the Commission was insufficient to educate it fully regarding the tax consequences of all of its activities.

The Commission sent a hearing rights letter to the Taxpayer on March 12, 2007. The Taxpayer did not respond to that letter but did respond to a follow-up letter mailed May 16, 2007. The Taxpayer respectfully declined to have a hearing, stating that it had provided all the information and justification for abatement of the deficiency within its ability.

For reasons that follow, the Commission hereby upholds the Bureau’s findings.

The Taxpayer is primarily a retailer of [Redacted]. It also improves real property (i.e. the Taxpayer is a contractor) with some of its larger products [Redacted].

When making a retail sale, the Taxpayer must tax the sale of goods at their fully fabricated price, as described in the following statute, cited in relevant part:

**Sale.** (1) The term "sale" means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration ....

(2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged or bartered:

(a) Producing, fabricating, processing, printing, or imprinting of tangible personal property for consumers who furnish, either directly or indirectly, the tangible personal property used in the producing, fabricating, processing, printing, or imprinting. (Idaho Code § 63-3612)

When the Taxpayer works as a contractor to improve real property, rather than make a retail sale, it is itself responsible for tax on the cost of goods it uses:

**Retail sale -- Sale at retail. ...**

(a) All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property. (Idaho Code § 63-3609)

When the Taxpayer withdraws fully fabricated items from its resale inventory for its use in improving real property, it owes tax on the fully fabricated value:

When a contractor who is also a retailer fabricates tangible personal property, puts it in his resale inventory, and later withdraws it for a job, tax applies to the fully fabricated value. This is true regardless of whether the fabricator installs the property himself or through an agent or subcontractor. (IDAPA 35.01.02.012.09.b)

According to the audit findings, the Taxpayer had difficulty distinguishing between retail sales and real property improvements. This difficulty resulted in its failure to correctly tax fabrication labor that is part of its retail sales price. Correctly taxing the cost of goods removed from a retail inventory for the purpose of improving realty was also a problem.

Since the Taxpayer is primarily a manufacturer of the retail goods it sells, it is entitled to an exemption from tax on the cost of certain equipment and supplies that are primarily and directly used in the production process (Idaho Code § 63-3622D.) The auditor allowed the

exemption under this statute, commonly referred to as a production exemption, which resulted in some tax credits against the total deficiency. Also, the auditor did not impose a five percent negligence penalty.

The Taxpayer believes that there is a lack of tax information available about its industry. Further, it believes that its business is unique. The Commission disagrees with both of these assessments. The sales tax statutes and rules together cover the “hybrid business” of a retailer who also performs some contracts to improve real property.

While it admittedly can be perplexing to understand and simultaneously apply the law to manufacturing, retail sales, and real property contracting in a single business, the Commission believes that the Taxpayer, since it began collecting and remitting tax in 1990, could have better availed itself of the Commission’s Taxpayer Services (via phone or email), periodic issues of Tax Update (which it would receive as a permit holder), and sales tax educational brochures.

Each issue of Tax Update notifies its readers of the locations and phone numbers (including a toll-free number) of Commission offices. Tax Update called readers’ attention to the Commission’s Internet site where sales tax brochures and a “frequently asked questions” (FAQ) page exist. There are brochures available via the Internet and through the mail on retail sales, the production exemption, and contracting to improve real property.

The Commission was limited by statute in this case to audit only the past three-year’s transactions for tax errors (Idaho Code § 63-3633.) Thus, the Taxpayer is spared for presumed errors earlier than the audit period. Further, as noted above, the Bureau did not add a negligence penalty to the deficiency. Additionally, the audit offset approximately \$2,000 in tax erroneously paid by the Taxpayer against the final deficiency. The Commission believes it has treated the Taxpayer equitably.

The Commission is allowed by statute to amend the amount due when there is an extreme financial hardship, a doubt as to collectibility, or a doubt as to liability. The Taxpayer has not suggested that any of these situations exist.

The Taxpayer has not provided the Commission with information to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the tax deficiency notice for the period January 1, 2003, through December 31, 2005. A determination of the State Tax Commission is presumed to be correct (*Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)), and the burden is on the Taxpayer to show that the deficiency is erroneous (*Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986)).

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the Taxpayer's sales and use tax liability for the period January 1, 2003, through December 31, 2005.

The Bureau added interest to the sales and use tax deficiency and this has been updated to the present. The Commission reviewed this addition and found it to be appropriate per Idaho Code § 63-3045.

WHEREFORE, the Notice of Deficiency Determination dated December 8, 2006, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS HEREBY ORDERED and THIS DOES ORDER that Taxpayer pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$10,811	\$ 2,283	\$ 13,094

DEMAND for immediate payment of the foregoing amount is hereby made and given.  
For each day before October 27, 2007, that full payment is made, the Taxpayer may subtract  
\$2.08 from the total due.

An explanation of the Taxpayer's right to appeal this decision is included with this  
decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2007, a copy of the  
within and foregoing DECISION was served by sending the same by United States mail, postage  
prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.